

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RAYSHON GADISON,

Plaintiff,

v.

HEATHER SHIRLEY, et al.,

Defendants.

Case No. 1:23-cv-00519-HBK (PC)

ORDER TO ASSIGN TO DISTRICT JUDGE

FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION FOR A FAILURE TO  
OBEY COURT ORDER AND PROSECUTE  
ACTION

FOURTEEN-DAY DEADLINE

Plaintiff Rayshon Gadison is a state prisoner proceeding pro se in this civil rights action. For the reasons set forth below, the undersigned recommends the District Court dismiss this action for Plaintiff's failure to comply with a court order and prosecute this action.

**BACKGROUND**

Plaintiff Gadison initiated this action with 18 other inmates by filing a single unsigned civil rights complaint under 42 U.S.C. § 1983 on March 28, 2023. (*See Ricky L. Thomas et al. v. Shirley, et al.*, Case No. 1:23-cv-00470-BAM, Doc. No. 1). On April 5, the assigned magistrate judge, after determining each of the eighteen plaintiffs must proceed in separate civil actions, severed the claims and ordered each plaintiff, including Gadison, to submit his or her own signed complaint and either pay the \$402.00 filing fee or apply to proceed *in forma pauperis* under 28 U.S.C. § 1915 within 45 days. (Doc. No. 1 at 2-3). The Court enclosed a blank complaint form and *in forma pauperis* application with instructions for Plaintiff's use. (Doc. Nos. 1-1, 1-2). In

the Order severing Plaintiff's case, the Court expressly warned Plaintiff that a failure to comply "will result in dismissal of that Plaintiff's individual action." (Doc. No. 1 at 4, ¶ 7). Plaintiff Gadison has failed to timely comply with the April 5, 2023 Order.<sup>1</sup>

## APPLICABLE LAW AND ANALYSIS

### A. Legal Standard

Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action when a litigant fails to prosecute an action or fails to comply with other Rules or with a court order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889 (9th Cir. 2019) (citations omitted). Similarly, the Local Rules, corresponding with Federal Rule of Civil Procedure 11, provide, "[f]ailure of counsel or of a party to comply with ... any order of the Court may be grounds for the imposition by the Court of any and all sanctions ... within the inherent power of the Court." E.D. Cal. L.R. 110. "District courts have inherent power to control their dockets" and, in exercising that power, may impose sanctions, including dismissal of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to prosecute an action, obey a court order, or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules). In determining whether to dismiss an action, the Court must consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *Henderson*, 779 F.2d at 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

### B. Analysis

The undersigned considers each of the above-stated factors and concludes dismissal is

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<sup>1</sup> In addition to the forty-five (45) days, the undersigned afforded Plaintiff and additional fifteen (15) days for mailing before issuing these Findings and Recommendation.

1 warranted in this case. As to the first factor, the expeditious resolution of litigation is deemed to  
2 be in the public interest, satisfying the first factor. *Yourish v. California Amplifier*, 191 F.3d 983,  
3 990-91 (9th Cir. 1999).

4 Turning to the second factor, the Court's need to efficiently manage its docket cannot be  
5 overstated. This Court has "one of the heaviest caseloads in the nation," and due to the delay in  
6 filling judicial vacancies, which was further exacerbated by the Covid-19 pandemic, continues to  
7 operate under a declared judicial emergency. *See* Amended Standing Order in Light of Ongoing  
8 Judicial Emergency in the Eastern District of California. The Court's time is better spent on its  
9 other matters than needlessly consumed managing a case with a recalcitrant litigant. The Court  
10 cannot effectively manage its docket if a litigant ceases to litigate his case. Thus, the Court finds  
11 that both the first and second factors weigh in favor of dismissal.

12 Delays inevitably have the inherent risk that evidence will become stale or witnesses'  
13 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third  
14 factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor, risk of prejudice  
15 to defendant, also weighs in favor of dismissal since a presumption of injury arises from the  
16 occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524  
17 (9th Cir. 1976).

18 Finally, the fourth factor usually weighs against dismissal because public policy favors  
19 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However,  
20 "this factor lends little support to a party whose responsibility it is to move a case toward  
21 disposition on the merits but whose conduct impedes progress in that direction," which is the case  
22 here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th  
23 Cir. 2006) (citation omitted). Indeed, "trial courts do not have time to waste on multiple failures  
24 by aspiring litigants to follow the rules and requirements of our courts." *Pagtalunan*, 291 F.3d at  
25 644 (Trott, J., concurring in affirmance of district court's involuntary dismissal with prejudice of  
26 habeas petition where petitioner failed to timely respond to court order and noting "the weight of  
27 the docket-managing factor depends upon the size and load of the docket, and those in the best  
28 position to know what that is are our beleaguered trial judges.").

1 Finally, the Court's warning to a party that failure to obey the court's order will result in  
2 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262;  
3 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court's April 5, 2023, Order  
4 expressly warned Plaintiff that his failure to comply with the Court's order would result in a  
5 dismissal of this action. (Doc. No. 1 at 4, ¶ 7). Thus, Plaintiff had adequate warning that  
6 dismissal could result from his noncompliance. And the instant dismissal is a dismissal *without*  
7 prejudice, which is a lesser sanction than a dismissal with prejudice, thereby addressing the fifth  
8 factor.

9 After considering the factors set forth *supra* and binding case law, the undersigned  
10 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41 and Local Rule 110.

11 Accordingly, it is **RECOMMENDED**:

12 This action be DISMISSED without prejudice for Plaintiff's failure to obey a court order  
13 and failure to prosecute this action.

14 **NOTICE**

15 These Findings and Recommendations will be submitted to the United States District  
16 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days**  
17 **of the date of service** of these Findings and Recommendations, Plaintiff may file written  
18 objections with the Court. The document should be captioned, "Objections to Magistrate Judge's  
19 Findings and Recommendations." Plaintiff's failure to file objections within the specified time  
20 may result in waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.  
21 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22  
23 Dated: June 5, 2023

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25 HELENA M. BARCH-KUCHTA  
26 UNITED STATES MAGISTRATE JUDGE  
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